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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,573	12/03/2003	Eiko E. Kato	450133-04595.1	2292
20/999 7590 12/23/2008 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151				
EXAMINER				
WALSH, JOHN B				
ART UNIT		PAPER NUMBER		
2451				
MAIL DATE		DELIVERY MODE		
12/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,573

Applicant(s)

KATO ET AL.

Examiner

John B. Walsh

Art Unit

2451

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-52 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/CD/CD)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-17 are drawn to an information server. The specification at p. 13, lines 18-19 disclose the invention can be realized in software alone. Furthermore the claim does not recite any elements that physical elements, since all can cover elements of software. Thus the claim covers an embodiment that is software alone. Computer software is non-statutory subject matter unless stored on a statutory computer readable storage medium in order to realize the functionality of the computer program.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-52 (claims 1-17 as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,152,824 to Rothschild et al.

As concerns claim 1, an environment information server, comprising: a server controller (501); a network connection (fig. 3) connected to said server controller; an environment

information database (col. 5, line 40) connected to said server controller for storing data for one or more network environments; and a request handler (col. 3, lines 29-32) connected to said server controller for processing requests received through said network connection; wherein the environment information server periodically polls the one or more network environments and updates the environment information database with information regarding each of the one or more network environments (fig. 8 and 10; fig. 10, 109); wherein said request handler exchanges data with said environment information database and returns, in response to a received request, an environment report of network environments selectable by the user for connection (fig. 10; 110, 111).

As concerns claims 2, 23, 24, 44 and 45 environment information for an environment includes network information for the environment (addresses), status information for the environment, and user count information for the environment (col. 7, lines 40-45).

As concerns claims 3, 19 and 40, network information indicates a name (col. 10, line 45) of the environment.

As concerns claims 4, 20 and 41, said network information indicates a fully qualified domain name (inherent for connection to have a domain name) of the environment.

As concerns claims 5, 21 and 42, said network information indicates a port number (col. 3, line 66) of the environment.

As concerns claims 6, 22 and 43, said status information indicates whether the environment is available or not (col. 9, line 53).

As concerns claims 7, 23 and 44, said user count information indicates the current number of clients (col. 9, lines 10-22) connected to the environment.

As concerns claims 8, 24 and 45, wherein: said user count information indicates the maximum number (col. 9, lines 10-22; inherent for room or game to have a max. # of players) of clients allowed to be connected to the environment.

As concerns claims 9, 25 and 46 wherein: said environment information also includes description information (col. 10, line 43) indicating information describing the environment.

As concerns claims 10, 26 and 47, wherein: said description information indicates news about the environment (col. 10, line 43).

As concerns claims 11, 27 and 48, wherein: said environment report provides multi-lingual support (data is not in any particular language, therefore end system may convert it for presentation to the default language for the system thus providing the support).

As concerns claims 12 and 28, wherein: said environment information request indicates client information (col. 5, line 40) about said client.

As concerns claims 13 and 37, wherein: each environment supports an on-line game (col. 1, lines 59-60).

As concerns claims 14, 31 and 50, wherein: said requests are received from game consoles (1; client computers) connected to said network connection through the Internet (col. 1, line 31).

As concerns claims 15, 30 and 49, wherein: said network connection is connected to the Internet (col. 1, line 31).

As concerns claim 16, wherein: said request handler generates environment reports (fig. 8, 61) using data stored in said environment information database.

As concerns claims 17, 29 and 39, wherein: said request handler customizes environment reports using client information in received requests (fig. 8;65).

As concerns claims 18, 32, 51 and 52, a method of providing environment information, comprising: periodically polling one or more network environments (fig. 8 and 10); updating an environment information database with information regarding each of the one or more network environments (fig. 8 and 10; fig. 10, 109); receiving a request (60) from a user (1); retrieving environment information for the one or more environments from the environment information database (col. 5, line 40; fig. 8, memory storing the list-61); sending/presenting (fig. 8), in response to the user request, the environment report of network environments selectable by the user (fig. 10; 110, 111).

As concerns claims 32 and 52, receiving from said environment information server an environment report including environment information for two or more environments (fig. 8;62).

As concerns claim 33, the method of claim 32, further comprising: connecting said client to a data network; establishing said network connection between said client and said environment information through said data network; closing said network connection to said environment information server after receiving said environment report (fig. 8).

As concerns claim 35, the method of claim 32, further comprising: selecting an environment (fig. 10; 111) according to said environment report.

As concerns claim 36, the method of claim 35, further comprising: establishing a second network connection (fig. 8) to said selected environment.

As concerns claim 38, the method of claim 32, further comprising: said environment information request indicates client information (col. 5, line 40) about said client.

Response to Arguments

5. Applicant's arguments filed September 26, 2008 have been fully considered but they are not persuasive.

As concerns the rejection of claims 1-17 under 35 U.S.C. 101, the applicant argues that to assert this limits the invention to software alone ignores the implementation in electronic hardware or combination of hardware and software. The rejection was not based upon the claim covering the embodiments of hardware or a combination of hardware and software. These implementations were not ignored, they were considered by the Examiner to be statutory. However, the applicant's specification discloses the invention to be realized by software alone. This implementation is not being ignored since this claimed implementation is non-statutory subject matter as defined under 35 U.S.C. 101. Computer software does not fall into any one of the statutory categories of a process, machine, manufacture, or composition of matter.

The applicant has indicated particular modes of operation of Rothschild, however it appears the applicant is reading additional limitations or meanings into the claims. The claims are given the broadest reasonable interpretation and limitations from the specification are not read into the claim. Rothschild anticipates the claim limitations, including the newly amended claim limitations that have been addressed in the rejection above.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

USPGPUB 2004/0063497-discloses at least gaming server selected based on quality of service.

USPGPUB 2002/0013838-discloses at least selecting the best performing server.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 8:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John B. Walsh/
Primary Examiner, Art Unit 2451